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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CHARLES VAN NORT,

Plaintiff,

vs.

EDMUND G. BROWN, JR., et al.,

Defendants.

CASE NO. 14cv1663-LAB(KSC)

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

[Doc. No. 14.]

Plaintiff Charles Van Nort, a state prisoner proceeding *pro se*, filed this action pursuant to Title 42, United States Code, Section 1983. [Doc. No. 1.] Before the Court is plaintiff's Motion for Appointment of Counsel. [Doc. No. 14.] In his Motion, plaintiff requests that the Court appoint counsel in his case because: (1) he is unable to afford counsel; (2) the issues raised in the Complaint are complex; (3) significant research and investigation will be necessary and he has limited access to a law library; (4) he has a mental defect which limits his ability to prosecute the case; and (5) counsel "would better enable plaintiff to present evidence and cross-examine witnesses." [Doc. No. 14, at pp. 1-2.]

**DISCUSSION**

An indigent's right to appointed counsel has been recognized to exist "only where the litigant may lose his physical liberty if he loses the litigation." *Lassiter v. Department of Social Services of Durham County, N. C.*, 452 U.S. 18, 25 (1981).

1 District Courts generally lack authority to require counsel to represent indigent  
2 prisoners in Section 1983 cases. *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 298  
3 (1989). However, in certain “exceptional circumstances,” the Court may request the  
4 voluntary assistance of counsel. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.  
5 1991).

6 “A finding of exceptional circumstances requires an evaluation of both the  
7 likelihood of success on the merits and the ability of the petitioner to articulate his  
8 claims *pro se* in light of the complexity of the legal issues involved.” *Terrell*, 935 F.2d  
9 at 1017 (internal citations omitted). “Neither of these factors is dispositive and both  
10 must be viewed together before reaching a decision.” *Id.* (internal citation omitted).

11 In this case, there is no basis to support a finding of exceptional circumstances.  
12 First, plaintiff has not addressed the likelihood of success on the merits. Nor is a  
13 likelihood of success evident from the face of the Complaint.

14 Second, there is nothing from which this Court could conclude plaintiff lacks the  
15 ability to articulate and prosecute his claims *pro se*. He has filed an original  
16 Complaint; several motions; and an Opposition to defendants’ Motion to Dismiss.

17 Third, the allegations in the Complaint are not complex. The Complaint alleges  
18 defendants have violated the Eighth Amendment prohibition against cruel and unusual  
19 punishments, because he uses a wheelchair on a full-time basis and has been placed in  
20 a cell that is too small to accommodate a wheelchair. According to the Complaint, the  
21 small size of the cell makes it difficult for plaintiff to maneuver the wheelchair to  
22 access the sink, toilet, bed, and cell door. [Doc. No. 1, at pp. 11-12.]

23 Fourth, any hardships imposed by plaintiff’s incarceration, such as limited access  
24 to legal materials, are not enough to establish exceptional circumstances. As expressed  
25 in plaintiff’s moving papers, these hardships are no different from those encountered  
26 by all incarcerated civil litigants.

27 Finally, *pro se* litigants are afforded some leniency to compensate for their lack  
28 of legal training. “In civil rights cases where the plaintiff appears *pro se*, the court

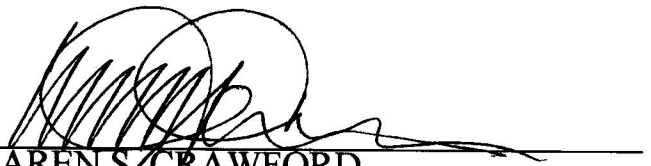
1 must construe the pleadings liberally and must afford plaintiff the benefit of any  
2 doubt.” *Jackson v. Carey*, 353 F.3d 750, 757 (9<sup>th</sup> Cir. 2003) (internal citation omitted).  
3 This also applies to motions. *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925  
4 (9<sup>th</sup> Cir. 2003). Accordingly, plaintiff’s *pro se* status will be taken into consideration  
5 by the Court when his filings are reviewed.

6 **Conclusion**

7 Based on the foregoing, IT IS HEREBY ORDERED THAT plaintiff’s Motion  
8 for Appointment of Counsel is DENIED.

9 IT IS SO ORDERED.

10 Date: July 15, 2015

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14 KAREN S. CRAWFORD  
15 United States Magistrate Judge  
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